



New South Wales

Marine Safety Amendment Bill 2024

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Marine Safety Act 1998* (*the Act*) to address miscellaneous recommendations arising from a discussion paper published by Transport for NSW in October 2022 on the *Marine Safety Regulation 2016*, including to—

- (a) expand the definitions of *vessel*, *obstruction to navigation* and *unsafe vessel*, and
- (b) insert new definitions, including for—
 - (i) the *relevant owner* of a vessel, to replace the definition of the *owner* of a vessel, and
 - (ii) the *person responsible* for a vessel or a former vessel, and
- (c) give the Minister responsible for administering the Act (the *Minister*) and authorised officers various powers in relation to—
 - (i) obstructions to navigation, and
 - (ii) unsafe vessels, including derelict vessels and certain former vessels, and
- (d) provide for the grant, suspension and cancellation of marine safety licences, and the transfer of vessel registration certificates, and
- (e) regulate certain activities conducted in or over navigable waters, and
- (f) create offences, including in relation to the registration of vessels, and
- (g) deal with the disturbance of, or interference with, the beds of certain ports, including the installation and removal of sea cables, and
- (h) provide for the declaration of, and giving of directions in relation to, offshore anchorages for a port, and

- (i) set out the requirements for the removal of disused sea cables from relevant ports, and
- (j) require Transport for NSW to establish and keep a public register of vessels to which certain statutory notices relate.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Marine Safety Act 1998 No 121

Vessels and former vessels generally

Schedule 1[2] extends the definition of *vessel* to a thing capable of being used on or in relation to water the Minister, in certain circumstances, declares to be a vessel for a period of up to 12 months.

Schedule 1[3] omits the definition of an *owner* of a vessel and inserts a definition for the *relevant owner* of a vessel. **Schedule 1[4], [19], [22], [23], [25]–[27], [49], [60], [63], [65], [67], [80] and [81]** make consequential amendments.

Schedule 1[3] also inserts a new definition for the *person responsible* for a vessel or former vessel. **Schedule 1[9]** makes a consequential amendment.

Schedule 1[8] omits a definition that is being moved to the dictionary inserted by Schedule 1[83].

Schedule 1[35], [47] and [53]–[55] modify the application of certain provisions of the Act, Parts 4 and 5 to certain vessels. **Schedule 1[5]** makes a consequential amendment.

Schedule 1[47] also inserts proposed Part 5, Division 1A, which deals with unsafe vessels, including giving authorised officers powers in relation to the removal, detention and seizure of unsafe vessels.

Schedule 1[55] also requires Transport for NSW to establish and keep a public register of vessels to which an outstanding statutory notice relates if the Minister is satisfied the statutory notice relates to the current condition or safety of the vessel.

Schedule 1[56] provides an example of when the harbour master for a port may give approval for the movement of a vessel within the port before the vessel is moved.

Schedule 1[57] exempts a vessel from compulsory pilotage under the Act, Part 6 if the master of the vessel holds a special recreational vessel permit that applies to the vessel and the relevant pilotage port. **Schedule 1[59]** makes a consequential amendment.

Schedule 1[58] exempts vessels less than 35m in length, instead of 30m, from compulsory pilotage under the Act, Part 6.

Schedule 1[61] clarifies the ways in which harbour masters of ports may give directions in relation to vessels. **Schedule 1[62]** makes a consequential amendment.

Marine safety licences

Schedule 1[24], [28] and [40] replace references to the responsible licensing official for a marine safety licence with references to the responsible regulator.

Schedule 1[36] clarifies that the following are types of marine safety licence—

- (a) aquatic licence,
- (b) bar crossing licence,
- (c) special recreational vessel permit.

Schedule 1[37] provides for the circumstances in which a person is not a suitable person to hold a marine safety licence.

Schedule 1[38] provides for the grant of marine safety licences. **Schedule 1[66]** makes a consequential amendment. **Schedule 1[39]** clarifies conditions with which vessel registration

certificates for vessels may be granted. **Schedule 1[43]** provides for the suspension and cancellation of marine safety licences. **Schedule 1[44]** provides for the cancellation of a marine pilot's licence in certain circumstances, including the retirement of the holder of the licence. **Schedule 1[45]** provides for the disqualification of persons from holding or being granted marine safety licences. **Schedule 1[51]** sets out additional grounds on which the responsible regulator may refuse to grant or transfer, or may suspend or cancel, vessel registration certificates.

Schedule 1[41] clarifies that marine safety licences cannot be transferred, except as otherwise as provided by the Act or the regulations.

Schedule 1[42] makes an amendment relating to conditions of marine safety licences.

Schedule 1[48] makes it an offence for the owner or master of a vessel to allow the vessel to be in State waters if the vessel is not registered under the Act. The offence does not apply to a vessel that is exempt from registration. **Schedule 1[50]** makes a consequential amendment.

Schedule 1[52] inserts proposed Part 5, Division 3, which provides for the transfer of vessel registration certificates. **Schedule 1[46]** provides for applications to the Civil and Administrative Tribunal for administrative review of certain decisions about the transfer of vessel registration certificates.

Aquatic activities and aquatic licences

Schedule 1[17] deals with aquatic activities and aquatic licences, including making it an offence for a person to conduct an aquatic activity unless the person—

- (a) holds an aquatic licence for the aquatic activity, and
- (b) conducts the aquatic activity in accordance with the conditions of the licence.

The proposed amendment also authorises the Minister to charge certain fees and amounts for certain activities, including certain aquatic activities, that require the exclusion of vessels and persons from specified areas. **Schedule 1[7]** makes a consequential amendment.

Obstructions to navigation and potential hazards

Schedule 1[11] extends the definition of *obstruction to navigation* to include a thing in or over navigable waters that—

- (a) is, or is likely to be, a danger to the safe navigation of vessels or otherwise unreasonably obstructs the navigation of vessels, or
- (b) restricts access to or from port facilities.

The proposed amendment also extends the definition to a vessel or former vessel that has sunk.

Schedule 1[15] clarifies the persons who may be responsible for an obstruction to navigation.

Schedule 1[16] authorises the Minister to take steps to reduce the danger of the obstruction to navigation to the safe navigation of vessels, whether or not the Minister has issued written notice to the owner or person responsible for the obstruction to navigation. **Schedule 1[10]** makes a consequential amendment.

Schedule 1[18] provides for additional regulation-making powers in relation to the safety of navigation.

Schedule 1[13] and [14] make minor amendments.

Offshore anchorages

Schedule 1[30] inserts proposed Part 2, Division 3, which authorises the Minister to—

- (a) declare an area of State waters as an offshore anchorage for a port, and
- (b) direct vessels to anchor at, or leave, an offshore anchorage.

Beds of relevant ports and sea cables

Schedule 1[30] also inserts proposed Part 2, Division 4, which makes provision for the beds of relevant ports, including by—

- (a) making it an offence for a person to disturb or interfere with the bed of a relevant port, except in certain circumstances, including with an approval granted by the harbour master of the port, and
- (b) setting out the requirements for the removal of disused sea cables from relevant ports.

Other amendments

Schedule 1[1] provides that a vessel is taken to be proceeding on a voyage from when the vessel gets underway for the voyage until the vessel is no longer underway, or is anchored, moored or berthed.

Schedule 1[6] provides that the Act is subject to the *Heritage Act 1977*.

Schedule 1[12], [20] and [21] are consequential on the new definition of *statutory notice* inserted by Schedule 1[83].

Schedule 1[29], [31], [32] and [74]–[79] make minor amendments.

Schedule 1[68] and [69] provide that notices or other instruments issued, made or given for the purposes of certain legislation, including the Act, may be served by electronic communication or another method authorised by the regulations.

Schedule 1[70] provides that a notice or direction may also be given under the Act in relation to an obstruction to navigation or an unsafe vessel by displaying the notice, or a notice containing the direction, on a conspicuous part of the obstruction or vessel for 7 days. It is an offence for a person to, without reasonable excuse, remove the notice.

Schedule 1[71] provides that, in the Act, a power to give a notice or direction includes a power to vary or withdraw the notice or direction.

Schedule 1[72] authorises the Minister to waive, reduce, postpone or refund, in whole or part, a fee payable or paid under the Act or the regulations made under the Act.

Schedule 1[73] removes a redundant section.

Schedule 1[82] inserts savings and transitional provisions.

Schedule 1[83] inserts proposed Schedule 5, which contains a dictionary that defines terms used in the Act. **Schedule 1[1], [33], [34] and [64]** make consequential amendments.

Schedule 2 Consequential amendments

Schedule 2 makes consequential amendments to various Acts.